

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THOMAS KEMPKE,

Plaintiff,

07 Civ. 11351(KMK)

-against-

MARY C. MARVIN, individually,  
ROBERT J. UNDERHILL, individually,  
ANNE W. POORMAN, individually,  
WILLIAM H. BARTON, individually,  
and the VILLAGE OF BRONXVILLE, N.Y.,

**AFFIRMATION IN  
OPPOSITION TO  
DEFENDANT'S MOTION  
TO DISMISS**

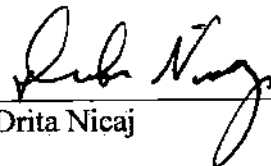
Defendants.

-----X  
  
DRITA NICAJ, an attorney duly admitted to this Court and the Courts of the State of New York, hereby affirms under penalty of perjury that the following statement is true:

1. I am counsel to Plaintiff and submit this affirmation in opposition to Defendants' Motion to Dismiss.
2. Annexed hereto as Exhibit 1 are copies of the relevant pages of the disciplinary hearing dated January 4, 2007.
3. Annexed hereto as Exhibit 2 are copies of the relevant pages of the disciplinary hearing dated January 10, 2007.
4. Annexed hereto as Exhibit 3 are copies of the affidavits of service of the amended summons and complaint in Kempkes v. Downey, 07 Civ 1298.
5. Annexed hereto as Exhibit 4 is a copy of the Answer, Reservation of Rights and Demand for a Public Hearing in In the Matter of Disciplinary Proceedings against Police Officer Thomas Kempkes.

6. For the reasons set forth in Plaintiff's accompanying memorandum of law, it is submitted that Defendants' motion should in all respects, be denied.

Dated: White Plains, New York  
July 18, 2008

  
\_\_\_\_\_  
Drita Nica

**EXHIBIT 1**

VILLAGE OF BRONXVILLE  
BOARD OF POLICE COMMISSIONERS

-----x  
IN THE MATTER OF DISCIPLINARY CHARGES  
DATED AUGUST 21, 2006,

-preferred against-

POLICE OFFICER THOMAS KEMPKE,  
-----x

Bronxville Library  
Yeager Community Room  
January 4, 2007  
6:30 p.m.

D I S C I P L I N A R Y    H E A R I N G

CARBONE & ASSOCIATES, LTD.

Melissa Sasso

111 North Central Park Avenue

Hartsdale, New York 10530

(914) 684-0201

COPY

Cross/Redirect - Satriale

241

1 MR. LOVETT: Well, I'll tell you  
2 what, I don't see what the point of that  
3 statement is, but the Lieutenant was  
4 subpoenaed by me.

5 MR. O'NEIL: He was not subpoenaed.

6 MR. LOVETT: Please, excuse me. I'm  
7 talking. Let him disregard my subpoena  
8 and we will fight it out in Supreme Court  
9 where I can have him held in contempt. If  
10 you want to play that smart ass game that  
11 is fine. It's his reputation at stake.

12 MR. O'REILLY: We have your comment  
13 on the record. We will deal with that when  
14 we get to that point.

15 MR. LOVETT: Fine.

16 MR. O'REILLY: Do you have any  
17 questions, Mr. O'Neil?

18 MR. O'NEIL: Just a few.

19 REDIRECT EXAMINATION BY MR. O'NEIL:

20 Q Lieutenant Satriale, the officers  
21 you mentioned who have been out for extended  
22 periods of time, Officer Dorre, did he ever accept  
23 command discipline for violating the department  
24 sick leave policies and procedures?

25 A No.

Redirect - Satriale

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1 MR. LOVETT: Objection. It is  
2 totally irrelevant. Here we go again  
3 poisoning the record. Why don't you see if  
4 you can put it in bold face and underline  
5 it next time, Counsel.

6 MR. O'NEIL: There is an argument by  
7 Counsel that he had no idea that this  
8 policy and procedure was applicable, so  
9 even if this evidence is offered to show  
10 the ridiculousness of that argument, to  
11 show that not only did he have knowledge  
12 that this policy applied, but he had  
13 accepted command discipline, which I  
14 believe was the most serious command  
15 discipline in the history of the  
16 department up to that time, so for him to  
17 make that argument that that has no  
18 relevancy when his argument here is that  
19 he didn't believe this applied, whether it  
20 poisons the record or not, certainly the  
21 relevancy of that outweighs the facts of  
22 keeping it out. And why people would be  
23 treated differently, if someone has  
24 violated the policy, you are certainly  
25 entitled to treat them differently than

Redirect - Satriale

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1 someone who never violated the policy, so  
2 I think this is extremely relevant to  
3 examine why he was treated differently.  
4 There is no question he was treated  
5 differently. You know, people say you  
6 discriminate. Well, you are allowed to  
7 discriminate if there is a reason to do  
8 it, if you're a sick leave abuser or  
9 offender rather than someone who never  
10 violated the trust of getting these days,  
11 getting paid for staying home, and taking  
12 care of themselves as opposed to people  
13 wandering around and the events  
14 surrounding the initial discipline are  
15 obviously very serious, and what he did in  
16 that regard will come out through another  
17 witness, but certainly the Board is  
18 entitled to know that the reason Officer  
19 Dorre may have been treated differently  
20 than Officer Kempkes is because Officer  
21 Dorre was never taking command discipline  
22 for violating the same policy before.

23 MR. LOVETT: I appreciate that, even  
24 though it is irrelevant. We reserved our  
25 rights to litigate in Federal Court, but

Redirect - Satriale

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1 as Counsel so eloquently stated, it is a  
2 sort of sloppy attempt to articulate a  
3 selective prosecution claim. That is one  
4 of our claims we advanced in Federal  
5 Court. It is not for you folks to decide.  
6 It is for a jury to decide what the  
7 damages are going to be. So having  
8 poisoned the well once again and telling  
9 everybody that the poison is more than the  
10 prejudice I congratulate Counsel. He  
11 probably could not do more to damage the  
12 record in this case than he already has  
13 done, but I'm sure he will give it another  
14 shot.

15 MR. O'NEIL: I didn't bring up  
16 Officer Dorre, Officer Murray, or Officer  
17 Panzarino, or Officer Mitchell. It was all  
18 brought up on cross. I'm certainly  
19 entitled to go into why they were treated  
20 differently on redirect.

21 MAYOR MARVIN: I'm prepared to  
22 overrule the objection.

23 MR. LOVETT: Incidentally, before  
24 you do that, since Counsel announced what  
25 my client got is the most serious



Redirect - Satriale

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1 punishment ever meted out in the  
2 department, you have to look behind that.  
3 You have one officer who committed an  
4 assault on a civilian, and guess what he  
5 got, nothing. Guess who was a witness,  
6 the good Lieutenant Satriale. What he got  
7 was nothing. False reports were filed.  
8 Nobody got more serious punishment because  
9 they were the good old fair-haired boys.

10 MR. O'REILLY: We have a ruling.  
11 Can we have the Lieutenant, would you  
12 answer the question, please? Do you need  
13 to have it read back?

14 MR. O'NEIL: Do you need the  
15 question read back?

16 A No. Did Dorre ever receive command  
17 discipline, no.

18 Q How about Officer Murray?

19 A No.

20 Q By the way, with regard to Officer  
21 Murray, was his home ever visited with regard to  
22 the utilization of sick leave?

23 MR. LOVETT: Objection, leading.

24 MR. O'NEIL: Yes, it's redirect.

25 MR. LOVETT: It's leading. It

Redirect - Satriale

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1 absences?

2 A Yes.

3 Q What did he tell you?

4 A Make sure he's home. Continue to  
5 check on him.

6 Q Can officers in the department  
7 check their e-mails from outside of the department  
8 computers?

9 A No.

10 MR. LOVETT: Objection. There is no  
11 foundation that this witness has any  
12 competency to answer that. How does he  
13 know?

14 MAYOR MARVIN: I'm prepared to  
15 overrule that objection.

16 MR. LOVETT: Of course you are.

17 (Whereupon the Board was polled.)

18 MAYOR MARVIN: Objection overruled.  
19 Continue.

20 A No, same answer.

21 Q During any of the prior checks of  
22 Officer Kempkes' home, prior to July 6th of 2006,  
23 did you ever have any conversations with him with  
24 regard to him being out on the deck or in his  
25 backyard?

Redirect - Satriale

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1 A Yes.

2 Q Can you tell us the circumstances  
3 under which that arose?

4 MR. LOVETT: Totally improper  
5 redirect. It doesn't come up remotely on  
6 cross.

7 MR. O'NEIL: We spent 15 minutes on  
8 the deck, the back of the house.

9 MAYOR MARVIN: I'm prepared to  
10 overrule the objection.

11 MR. O'NEIL: Thank you.

12 (Whereupon the Board was polled.)

13 MAYOR MARVIN: Objection overruled.

14 MR. LOVETT: Before you get so  
15 excited and overrule all the objections,  
16 Ms. Mayor, there was no question about any  
17 conversations about the deck or the porch  
18 which my client referenced on direct or  
19 cross examination. Why don't you just  
20 disband what minimal rules of evidence  
21 there are here so that Mr. O'Neil can ask  
22 whatever he has to to try and catch up.

23 MR. O'NEIL: With all do respect, it  
24 is not minimal rulings of evidence  
25 applicable here. There are no rules of

Redirect - Satriale

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1 evidence applicable in this hearing.  
2 Certainly they apply when they help get  
3 out the truth, but it is clear that the  
4 rules of evidence do not apply.

5 MR. LOVETT: They won't be answered  
6 in this kangaroo forum. They will be  
7 answered in Federal Court.

8 MR. O'NEIL: You can answer the  
9 question. Do you remember it?

10 A Yes. There was a time when Officer  
11 Kempkes did not answer the door at his home, and a  
12 subsequent conversation I had with him where he  
13 said he had been on the deck in the rear yard of  
14 his home and he didn't hear the doorbell.

15 MR. O'NEIL: Can I ask that the  
16 witness be shown Department's Exhibit 2?

17 (Whereupon, a document was handed  
18 to the witness.)

19 Q Could you turn to Article 4,  
20 Subsection 4.1?

21 MR. LOVETT: Objection. This has no  
22 bearing on cross-examination. It was not  
23 the subject of direct. It's improper  
24 redirect, but I'm sure that the Mayor will  
25 be inclined to overrule my objection, just

Redirect - Satriale

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1 as she has on almost every other major  
2 point.

3 MR. O'NEIL: There is no question  
4 yet, so I don't know what you are  
5 objecting to.

6 MR. LOVETT: I'm objecting to the  
7 subject matter. It is sort of obvious.

8 MR. O'NEIL: You spent almost --

9 MR. LOVETT: Do you think the  
10 reporter can take us both down? Guess  
11 again. It wasn't the subject of direct.  
12 It's not the subject of cross. It's  
13 improper redirect.

14 MR. O'NEIL: There was, again, 20  
15 minutes, at least, as to why he was  
16 performing his supervisory duties by  
17 spending time at Officer Kempkes'  
18 residence as opposed to doing other things  
19 that Mr. Lovett may have thought were more  
20 important, so I think I'm entitled on  
21 redirect to inquire as to that.

22 MAYOR MARVIN: I'm prepared to  
23 overrule the objection.

24 (Whereupon the Board was polled.)

25 MAYOR MARVIN: Objection overruled.

**EXHIBIT 2**

VILLAGE OF BRONXVILLE  
BOARD OF POLICE COMMISSIONERS

-----x  
IN THE MATTER OF DISCIPLINARY CHARGES  
DATED AUGUST 21, 2006,

- preferred against-

POLICE OFFICER THOMAS KEMPKE,

-----x  
177 Pondfield Road  
Bronxville, New York  
January 10, 2007  
6:30 p.m.

D I S C I P L I N A R Y      H E A R I N G

CARBONE & ASSOCIATES, LTD.  
Melissa Sasso  
111 North Central Park Avenue  
Hartsdale, New York 10530  
(914) 684-0201

COPY

Direct - Downey

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1 I don't know what relevancy they have to  
2 the charges, or which involvement preceded  
3 the suspension.

4 MR. O'REILLY: Mr. Lovett?

5 MR. LOVETT: He dropped his voice  
6 and I couldn't hear the last melodic  
7 strand of his statement.

8 MR. O'NEIL: The last melodic  
9 strands?

10 MR. O'REILLY: Okay. Could you read  
11 it back, please?

12 (Whereupon, the testimony was read  
13 back by the reporter.)

14 MR. LOVETT: Well, the relevance is  
15 that the Chief of Police violated my  
16 client's right by suspending him without  
17 pay. The Chief had no authority to do  
18 that. It was only the power of the Village  
19 Board of Police Commissioners who could  
20 suspend without pay, and we intend to show  
21 in our post hearing submission that the  
22 Chief violated the law wholesale in  
23 several respects, but I think it is  
24 germane so you know what you are dealing  
25 with here.



Direct - Downey

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1 MR. O'NEIL: If in fact the  
2 suspension did violate the law, Mr. Lovett  
3 has read only one portion of the statute.  
4 There are other provisions in that statute  
5 which we believe authorized the Chief to  
6 make the suspension, but if in fact there  
7 is an allegation that that suspension was  
8 illegal, it has nothing to do with this  
9 proceeding. That would be a separate issue  
10 that ought to be pursued, frankly, in  
11 another form.

12 MR. LOVETT: It will be, but if you  
13 like I can give you 5711-Q and \$100.00  
14 right here if you can find anything in  
15 here where it says the Chief can suspend  
16 any member without pay.

17 MAYOR MARVIN: I'm prepared to  
18 overrule the objection.

19 (Whereupon the Board was polled.)

20 MAYOR MARVIN: All right, objection  
21 overruled.

22 MR. LOVETT: Thank you.

23 Q Now would you answer my question,  
24 why did you change the status from suspended  
25 without pay to suspended with pay?

**EXHIBIT 3**

STATE OF NEW YORK UNITED STATES DISTRICT COURT SOUTHERN DISTRICT  
DOCUMENTS SERVED WITH INDEX#: 07CIV.1298 AND FILED ON

THOMAS KEMPKE

Plaintiff(s)/Petitioner(s)

Vs.

BRIAN M. DOWNEY, INDIVIDUALLY, ET AL

Defendant(s)/Respondent(s)

STATE OF: NEW YORK )

SS

COUNTY OF WESTCHESTER )

The undersigned deponent, being duly sworn deposes and says: Deponent is not a party herein, is over 18 years of age and resides in the State of New York. On 4/9/2007 at 7:00PM, deponent did serve the within process as follows:

Process Served: AMENDED SUMMONS AND FIRST AMENDED COMPLAINT, JUDGE'S RULES AND ELECTRONIC Filing Rules  
Party Served: (therein called)  
recipient) MARY C. MARVIN therein named.

At Location: BRONXVILLE VILLAGE BOARD MEETING  
201 PONDFIELD ROAD  
BRONXVILLE NY

APR 20 2007

By delivering a true copy of each to said recipient personally; deponent knew the person served to be the person described as said person therein.

A description of the Defendant, or other person served, or spoken to on behalf of the Defendant is as follows:

Sex FM Color of Skin WH Color of Hair BROWN  
Age 50 Height 5'2" Weight 130  
Other Features

Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or on active duty in the military service in the State of New York and was informed HER was not.

Sworn to before me on 4/12/2007

*Gail Williams*

*Joseph Valfone*  
Joseph Valfone

Server's License#: 1100190

GAIL WILLIAMS  
Notary Public, State of New York  
No. 4665052  
Qualified in Westchester County  
Commission Expires September 30, 2010

STATE OF NEW YORK UNITED STATES DISTRICT COURT SOUTHERN DISTRICT  
DOCUMENTS SERVED WITH INDEX#: 07CIV.1298 AND FILED ON

THOMAS KEMPKE

Plaintiff(s)/Petitioner(s)

Vs.

BRIAN M. DOWNEY, INDIVIDUALLY, ET AL

Defendant(s)/Respondent(s)

STATE OF: NEW YORK

SS

COUNTY OF WESTCHESTER

The undersigned deponent, being duly sworn deposes and says: Deponent is not a party herein, is over 18 years of age and resides in the State of New York. On 4/9/2007 at 6:55PM, deponent did serve the within process as follows:

Process Served: AMENDED SUMMONS AND FIRST AMENDED COMPLAINT, JUDGE'S RULES AND ELECTRONIC Filing Rules (herein called)

Party Served: (recipient) GLENN D. BELLITO therein named.

At Location: BRONXVILLE VILLAGE BOARD MEETING  
201 PONDFIELD ROAD  
BRONXVILLE NY

By delivering a true copy of each to said recipient personally; deponent knew the person served to be the person described as said person therein.

A description of the Defendant, or other person served, or spoken to on behalf of the Defendant is as follows:

Sex M Color of Skin WH Color of Hair BLACK  
Age 50 Height 5'10" Weight 200  
Other Features

Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or on active duty in the military service in the State of New York and was informed HE was not.

Sworn to before me on 4/10/2007

*Gail Williams*

*J. Vallone*  
Joseph Vallone

Server's License#: 1100190

GAIL WILLIAMS  
Notary Public, State of New York  
No. 4665052  
Qualified in Westchester County  
Commission Expires September 30, 2010

STATE OF NEW YORK UNITED STATES DISTRICT COURT SOUTHERN DISTRICT  
DOCUMENTS SERVED WITH INDEX#: 07CIV.1298 AND FILED ON

THOMAS KEMPKE

Plaintiff(s)/Petitioner(s)

Vs.

BRIAN M. DOWNEY, INDIVIDUALLY, ET AL

Defendant(s)/Respondent(s)

STATE OF: NEW YORK

SS

COUNTY OF WESTCHESTER

The undersigned deponent, being duly sworn deposes and says: Deponent is not a party herein, is over 18 years of age and resides in the State of New York. On 4/9/2007 at 6:58PM, deponent did serve the within process as follows:

Process Served: AMENDED SUMMONS AND FIRST AMENDED COMPLAINT, JUDGE'S RULES AND ELECTRONIC Filing Rules (herein called  
Party Served: ROBERT J. UNDERHILL therein named.  
recipient)

At Location: BRONXVILLE VILLAGE BOARD MEETING  
201 PONDFIELD ROAD  
BRONXVILLE NY

By delivering a true copy of each to said recipient personally; deponent knew the person served to be the person described as said person therein.

A description of the Defendant, or other person served, or spoken to on behalf of the Defendant is as follows:

Sex: M Color of Skin: WH Color of Hair: BROWN  
Age: 55 Height: 6'3" Weight: 195  
Other Features

Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or on active duty in the military service in the State of New York and was informed HE was not.

Sworn to before me on 4/10/2007

*Gail Williams*

*Joseph Vallone*

Server's License#: 1100190

GAIL WILLIAMS  
Notary Public, State of New York  
No. 4665052  
Qualified in Westchester County  
Commission Expires September 30, 2010

STATE OF NEW YORK UNITED STATES DISTRICT COURT SOUTHERN DISTRICT  
DOCUMENTS SERVED WITH INDEX#: 07CIV.1298 AND FILED ON

THOMAS KEMPKE

Plaintiff(s)/Petitioner(s)

Vs.

BRIAN M. DOWNEY, INDIVIDUALLY, ET AL

Defendant(s)/Respondent(s)

STATE OF: NEW YORK  
COUNTY OF WESTCHESTER

SS

The undersigned deponent, being duly sworn deposes and says: Deponent is not a party herein, is over 18 years of age and resides in the State of New York. On 4/9/2007 at 6:59PM, deponent did serve the within process as follows:

Process Served: AMENDED SUMMONS AND FIRST AMENDED COMPLAINT, JUDGE'S RULES AND ELECTRONIC Filing Rules (herein called  
Party Served: ANNE W. POORMAN therein named.  
recipient)

At Location: BRONXVILLE VILLAGE BOARD MEETING  
201  
BRONXVILLE NY

By delivering a true copy of each to said recipient personally; deponent knew the person served to be the person described as said person therein.

A description of the Defendant, or other person served, or spoken to on behalf of the Defendant is as follows:

Sex FM Color of Skin WH Color of Hair BLONDE  
Age 45 Height 5'5" Weight 130  
Other Features

Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or on active duty in the military service in the State of New York and was informed SHE was not.

Sworn to before me on 4/10/2007

*Gail Williams*

*JV*  
Joseph Vallone

Server's License#: 1100190

GAIL WILLIAMS  
Notary Public, State of New York  
No. 4665052  
Qualified in Westchester County  
Commission Expires September 30, 2010

STATE OF NEW YORK UNITED STATES DISTRICT COURT SOUTHERN DISTRICT  
DOCUMENTS SERVED WITH INDEX#: 07CIV.1298 AND FILED ON

THOMAS KEMPKE

Plaintiff(s)/Petitioner(s)

Vs.

BRIAN M. DOWNEY, INDIVIDUALLY, ET AL

Defendant(s)/Respondent(s)

STATE OF: NEW YORK  
COUNTY OF WESTCHESTER

)  
SS  
)

The undersigned deponent, being duly sworn deposes and says: Deponent is not a party herein, is over 18 years of age and resides in the State of New York. On 4/9/2007 at 7:00PM, deponent did serve the within process as follows:

Process Served: AMENDED SUMMONS AND FIRST AMENDED COMPLAINT, JUDGE'S RULES AND ELECTRONIC Filing Rules  
Party Served: (herein called  
recipient) WILLIAM H. BARTON therein named.

At Location: BRONXVILLE VILLAGE BOARD MEETING  
201 PONDFIELD ROAD  
BRONXVILLE NY

By delivering a true copy of each to said recipient personally; deponent knew the person served to be the person described as said person therein.

A description of the Defendant, or other person served, or spoken to on behalf of the Defendant is as follows:

Sex: M Color of Skin: WH Color of Hair: BROWN/BALD  
Age: 50 Height: 5'9" Weight: 175  
Other Features

Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or on active duty in the military service in the State of New York and was informed HE was not.

Sworn to before me on 4/10/2007

*Gail Williams*

*Joseph Vallone*  
Joseph Vallone

Server's License#: 1100190

GAIL WILLIAMS  
Notary Public, State of New York  
No. 4665052  
Qualified in Westchester County  
Commission Expires September 30, 2010

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THOMAS KEMPKE,

Plaintiff,

07 Civ 1298 (GAY)

-against-

**AFFIDAVIT OF SERVICE**

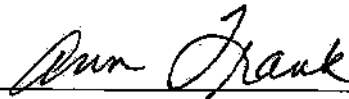
BRIAN M. DOWNEY, individually, MARY C.  
MARVIN, individually, GLENN D. BELLITO,  
Individually, ROBERT J. UNDERHILL,  
Individually, ANNE W. POORMAN, individually,  
WILLIAM H. BARTON, individually, and the  
VILLAGE OF BRONXVILLE, N.Y.,

Defendants.  
-----X

Ann Frank, being duly sworn says, I am not a party to the action, am over 18 years of age  
and reside at Hartsdale, New York.

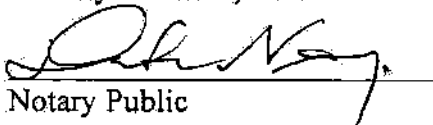
On March 27, 2007, I served a true copy of the Amended Summons and First Amended  
Complaint in the above captioned matter by mailing the same in a sealed envelope, with postage  
prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of  
New York, addressed to the last known address of the addressee(s) as indicated below:

TO: Howard M. Miller, Esq. on behalf of Defendants Downey and the Village of Bronxville  
Bond Schoeneck & King, PLLC  
1399 Franklin Avenue  
Suite 200  
Garden City, New York 11530-1679



Ann Frank

Sworn to before me this  
27<sup>th</sup> day of March, 2007

  
Notary Public

DRITA NICAJ  
Notary Public, State of New York  
No. 02N16000376  
Qualified in Putnam County  
Commission Expires 12/15/2009



**EXHIBIT 4**

VILLAGE OF BRONXVILLE  
POLICE DEPARTMENT

**ORIGINAL**

-----x

In the Matter of Disciplinary Proceedings

-against-

**ANSWER, RESERVATION OF  
RIGHTS, AND DEMAND FOR  
A PUBLIC HEARING**

Police Officer Thomas Kempkes,

Respondent.

-----x

Respondent THOMAS KEMPKEs, by his attorneys Lovett & Gould, LLP, for his answer, reservation of rights, demand for a bill of particulars and demand for a public hearing with respect to disciplinary charges dated August 21, 2006, states:

**RESERVATION OF RIGHTS**

1. Pursuant to England v. Louisiana Board of Medical Examiners, 365 U.S. 411 (1964), Respondent hereby reserves for adjudication by jury trial in the United States District Court for the Southern District of New York all federal civil rights claims that he has with respect to Brian M. Downey, individually, and the Village of Bronxville, New York for violations of his rights as guaranteed by reason of the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §1983.

**ANSWER**

2. Denies each Charge and/or Specification.

**AFFIRMATIVE DEFENSE**

3. Charge VIII, Specifications 2, 3, 4, 5, 6, 7, and 8 are time-barred and their inclusion in the instant disciplinary charges is calculatedly prejudicial and illegal.

**PUBLIC HEARING**

4. Pursuant to Section 5711-q(9) of the Unconsolidated Laws of the State of New York demand is hereby made for a public hearing before the Village of Bronxville Board of Police Commissioners on the instant disciplinary charges.

WHEREFORE the charges should be dismissed.

Dated: White Plains, N.Y.  
August 21, 2006

LOVETT & GOULD, LLP

By: 

Jonathan Lovett

Attorneys for Respondent  
222 Bloomingdale Road  
White Plains, N.Y. 10605  
914-428-8401